

**MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 22, 2019****SUPREME COURT - CIVIL CASES****KHOSLA V. STATE****CIVIL - INSURANCE**

**CIVIL PROCEDURE - REASSIGNMENT - IMPROPER REASSIGNMENT** - Reassignment or transfer of a case is not allowed if it is unreasonable or without purpose

**CIVIL PROCEDURE - CASE ASSIGNMENT - RANDOMNESS** - Under Rule 1.05A of the Uniform Circuit and County Court Rules, all civil cases in multi-judge districts and courts should be assigned in a method that ensures the assignment is random

**CIVIL PROCEDURE - LACK OF STATUTORY SPECIFICITY - LAWFUL PROCEDURE** - Under Miss. R. Civ. P. 81(g), the court may proceed in any lawful manner that is not inconsistent with The Constitution of the State of Mississippi, Miss. R. Civ. P., or any applicable statute.

**FACTS**

The State of Mississippi sued multiple defendants who are former officers, directors, employees, and instructors of KiOR Inc. KiOR is a startup biofuels company which the State lent \$75 million to in order to construct a production facility. KiOR filed for bankruptcy after it finished construction, and the State sued KiOR for fraudulent and negligent misrepresentation, fraudulent and negligent omission, civil conspiracy, aiding and abetting, and respondeat superior. The case was randomly assigned to Circuit Court Judge William Gowan in the Hinds County Circuit Court who later issued an order reassigning the case to Senior Circuit Court Judge Tomie Green. Judge Gowan stated that the case should be transferred because he would not be the presiding judge for the duration of the case. Defendants appealed.

**ISSUE**

Whether trial court judges in a multi-judge district may reassign cases amongst themselves.

**HOLDING**

Because the trial court was within its discretion to reassign the case, the reassignment was proper. Therefore, the Supreme Court affirmed and remanded the judgment of the Hinds County Circuit Court.

**DISSENTS**

Chief Justice Randolph argued that the reassignment was not reasonable, legitimate, or justifiable, and that retirement is not a proper purpose for reassigning a case to another judge. Justice Griffis argued that because Judge Green had no similar case on her docket, the reassignment was unjustified.

**Affirmed & Remanded - 2017-IA-01637-SCT (Aug. 22, 2019)**

En Banc Opinion by Presiding Justice Kitchens - Dissents by Chief Justice Randolph & Justice Griffis

Hon. William A. Gowan, Jr. (Hinds County Circuit Court, First Judicial Dist.)

J. Douglas Minor Jr., Roy D. Campbell III, Alicia N. Netterville, Jan Nielsen Little, Steven P. Ragland, Justina K. Sessions, Dean A. Ziehl, William C. Brabec, H. Richard Davis, Michael G. Bongiorno, Peter J. Kolovos, Lindsey B. Silver, Leah N. Ledford, James P. Streetman III, Paul E. Coggins, & Kip Mendrygal for Appellants - William M. Quinn II & W. Thomas McCraney III for Appellee  
Briefed by [Luke Seymour](#)

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## LIBERTY MUT. INS. CO. V. STATE EX REL. JIM HOOD

### CIVIL - INSURANCE

**CIVIL PROCEDURE - SPECIAL MASTER - CONSENT** - Reference to a special master without the consent of the parties is the exception and not the rule, and any reference without the consent of the parties would require a finding by the trial judge of exceptional conditions

**CIVIL PROCEDURE - SPECIAL MASTER - AUTHORITY** - A special master may not be granted “concurrent jurisdiction” with a trial judge by that trial judge

**CIVIL PROCEDURE - JUDICIAL CONDUCT - EX PARTE COMMUNICATION** - Canon 3B(7) of the Code of Judicial Conduct prohibits a judge – as well as a special master – from initiating, permitting, or considering ex parte communications, unless the judge makes provisions promptly to notify all other parties of the substance of the ex parte communications and allows an opportunity to respond

### FACTS

The State of Mississippi brought several actions against insurance companies for misadjusting claims following Hurricane Katrina. One of the companies was Liberty Mutual Insurance, and the case was randomly assigned to Judge Green. Judge Green entered an order to appoint a special master for the case, stipulating that expenses will be borne by both parties. Liberty Mutual filed a motion to dismiss the State’s claims based on a failure to state a claim and a failure to join necessary parties. Judge Green then issued a sua sponte order appointing a special master. The order expressly granted the special master concurrent jurisdiction with the trial court and empowered him to address all litigation matters. The order also allowed the special master to engage in ex parte communications with counsel and authorized him to maintain the secrecy of this ex parte communication. Liberty Mutual filed a motion for interlocutory appeal, challenging the order to appoint a special master.

### ISSUE

Whether the circuit court abused its discretion in appointing a special master.

### HOLDING

Because the trial judge gave the special master concurrent jurisdiction with the circuit court, she essentially appointed a de facto judge. Miss. Rule of Civ. Pro. 53 does not permit a trial judge to establish a de facto judge, and the trial judge’s justification of numerous motions pertaining to discovery, privileged matters, and arbitration did not hold up to scrutiny. Also, because the trial judge’s order does not require that all parties be notified of the substance of the ex parte communications, but instead permits the special master to maintain the secrecy of his ex parte communications with counsel, the order violates Rule 53. Therefore, the Supreme Court vacated the order appointing a special master and remanded the case for further proceedings.

### DISSENT

Justice King argued that the circuit court did not abuse its discretion by appointing a special master because it justified its appointment by referencing the complex issues involved in the case as well as numerous anticipated pre-trial and discovery disputes. Further, the trial court is in the best position to determine whether complexities in a case are sufficiently exceptional to warrant reference to a special master. While the trial judge did state that the special master had concurrent jurisdiction, she still reserved all final decision making exclusively to the trial court, therefore not exceeding the special master’s grant of authority under Rule 53.

### **Vacated & Remanded - 2017-IA-01558-SCT (Aug. 22, 2019)**

En Banc Opinion by Justice Maxwell - Dissent by Presiding Justice King

Hon. Tommie T. Green (Hinds County Circuit Court)

Gregg A. Caraway, Clifford Kavanaugh Bailey III, Judy Y. Barrasso, Stephen L. Miles, & Chloe M. Chetta for Appellant - George W. Neville, Donald L. Kilgore, Jacqueline H. Ray, William L. Smith, W. Lucien Smith, Benjamin Gilbert Bryant, Crymes G.

Pittman, William E. Copley, & Cecil Maison Heidelberg for Appellee

Briefed by [Reid Hudson](#)

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## SAFECO INS. CO. OF AMERICA V. STATE EX REL. JIM HOOD

### CIVIL - INSURANCE

**CIVIL PROCEDURE - REASSIGNMENT OF CASES - ABUSE OF DISCRETION** - Any reassignment or transfer of a case is improper and will not be allowed to stand if it was unreasonable or without legitimate purpose

**CIVIL PROCEDURE - SPECIAL MASTERS - SCOPE OF APPOINTMENT** - Courts utilize Miss. R. Civ. P. 53 special masters to review facts, to organize information, and to give comprehensive recommendations or reports to assist the judge in making his or her decision.

**PROFESSIONAL ETHICS - JUDICIAL CONDUCT - EX PARTE COMMUNICATIONS** - A judge or special master shall not initiate, permit, or consider ex parte communications

### FACTS

The Homeowner Assistance Program (“HAP”) was a federally funded program in response to Hurricane Katrina to assist uninsured or underinsured homeowners. The State of Mississippi was responsible for covering a portion of recovery funds, dependent on whether or not the damage had been caused by wind or by flood. The State asserted that several insurance companies, including Safeco, misidentified flood damage as wind damage so as to avoid paying out the relevant funds. The State filed suit against Safeco, and the case was randomly assigned to Judge Gowan. At the same time, the State filed suit against Liberty Mutual, and the case was randomly assigned to Judge Green. Judge Green issued sua sponte orders in both the Safeco and Liberty Mutual cases appointing a special master, citing the trial court’s overcrowded docket, the case’s complexity, and the number of pretrial motions. Then, Judge Green reassigned the Safeco case to her own docket. Safeco appealed.

### ISSUES

Whether the circuit court erred by (1) unilaterally and non-randomly reassigning the Safeco case to Judge Green and (2) appointing a special master without an exceptional condition to justify it and by granting the special master excessive authority, including unlimited ex parte communication.

### HOLDING

(1) Because the reassignment order’s language and the totality of circumstances evidenced that the reassignment of the case was not based on reasonable, legitimate, or justifiable reasons, the trial court abused its discretion by reassigning Safeco’s case to Judge Green’s docket. (2) Because reference to a special master without the parties’ consent required a finding of exceptional circumstances, and because Judge Green’s order of referral granted the special master concurrent jurisdiction with the trial court surpassed the scope of Miss. R. Civ. P 53 and authorized the special master to participate in ex parte communication with counsel, the trial court abused its discretion by appointing a special master.

### DISSENTS

Justice Kitchens argued there were reasonable, legitimate, and justifiable reasons for reassignment of Safeco’s case to Judge Green’s docket, including the fact that both Judge Green and Judge Gowan agreed to do the reassignment in the interest of judicial economy. Justice King argued there were exceptional circumstances to justify reference to a special master. He further argued that the majority opinion too narrowly interpreted Miss. R. Civ. P 53. Also, he asserted that Judge Green’s use of the term “concurrent jurisdiction” in her order was merely an inartful misnomer.

### **Vacated & Remanded - 2017-IA-01554-SCT (Aug. 22, 2019)**

En Banc Opinion by Justice Griffis - Dissents by Presiding Justice Kitchens and Justice King

Hon. Tomie T. Green (Hinds County Circuit Court)

Gregg A. Caraway, Clifford K. (Ford) Bailey III, Judy Y. Barrasso, Stephen L. Miles, Chloe M. Chetta, & Stephen R. Klaffky for Appellant - George W. Neville, Donald L. Kilgore, Jacqueline H. Ray, William L. Smith, Lucien Smith, Benjamin Bryant, Crymes G. Pittman, William E. Copley, & Maison Heidelberg for Appellee

Briefed by [Michael Stirgus](#)

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## *SUPREME COURT - CRIMINAL CASES*

### **NELSON V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW & PROCEDURE - TRIALS - JURY INSTRUCTIONS** - Under the theory of an imperfect self-defense, an intentional killing may be considered manslaughter if done without malice but under a bona fide, but unfounded belief, that it was necessary to prevent death or great bodily harm

**CRIMINAL LAW & PROCEDURE - TRIALS - JURY INSTRUCTIONS** - A trial court does not abuse its discretion by refusing to instruct the jury on imperfect self-defense when the requested instruction is without foundation in the evidence

**CONSTITUTIONAL LAW - PROCEDURAL DUE PROCESS - SELF-INCRIMINATION PRIVILEGE** - A criminal defendant has the right to elect to not take the witness stand in his own defense, which is balanced against the rule that attorneys are given wide latitude in making their closing arguments

**CONSTITUTIONAL LAW - PROCEDURAL DUE PROCESS - SELF-INCRIMINATION PRIVILEGE** - Commenting on the defendant's failure testify, which is not allowed and constitutes reversible error, is different than commenting on the defendant's failure to put on a successful defense, which is allowable

#### **FACTS**

Derrick Nelson shot his mother's boyfriend, Willie Hood, Jr., at a family birthday party. Nelson and Hood were intoxicated, and an argument ensued after Nelson attempted to prevent Hood from driving home. Witness statements regarding the sequence of events conflicted and changed between the investigation and trial. However, witness statements and evidence indicated that during the argument, Nelson brandished a gun after Hood shattered a beer bottle on or near Nelson's car. Nelson fired two shots in the air, and then the two began to wrestle. While wrestling, Nelson's gun discharged, sending a bullet to Hood's head. Hood died, and the State indicted Nelson for murder. At trial, Nelson did not testify. During closing arguments, the State commented on Nelson's failure to call two eyewitnesses, including his mother. Regarding jury instructions, Nelson requested an instruction on imperfect self-defense, arguing the shooting was in self-defense. The Lowndes County Circuit Court initially granted the instruction but later withdrew and refused it. The jury convicted Nelson of first-degree murder, and he was sentenced to life imprisonment. Nelson appealed. The Court of Appeals held the evidence was sufficient to sustain Nelson's conviction. However, the court reversed Nelson's conviction due to the Lowndes County Circuit Court's refusal of the imperfect self-defense instruction and remanded the case for a new trial. The State appealed.

#### **ISSUES**

Whether (1) the circuit court erred in refusing the imperfect self-defense jury instruction; (2) the State deprived Nelson of a fair trial by commenting during closing argument on Nelson's decision to not testify; and (3) the evidence was sufficient to support the murder conviction.

#### **HOLDING**

(1) Because Nelson did not present an imperfect self-defense theory or any evidence that Nelson killed Hood without malice under a bona fide, but unfounded belief, that it was necessary to prevent Hood from inflicting death or great bodily harm upon Nelson, and because Nelson advanced a theory of an accidental shooting, the trial court properly refused the imperfect self-defense instruction. (2) Because the prosecutor commented on Nelson's failure to call two witnesses and not Nelson's own failure to testify, the State did not comment on Nelson's right to remain silent. (3) Because there was sufficient evidence to support Nelson's murder conviction, the court did not overturn it. Therefore,

the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed Nelson's murder conviction and sentence.

**The judgment of the Court of Appeals is reversed. The judgment of the Circuit Court of Lowndes County is reinstated & affirmed - 2016-CT-00835-SCT (Aug. 22, 2019)**

En Banc Opinion by Justice Chamberlain

Hon. James T. Kitchens, Jr. (Lowndes County Circuit Court)

J. Matthew Eichelberger for Appellant - Alicia Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Elena Peters](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 20, 2019

### COURT OF APPEALS - CIVIL CASES

#### ABERCROMBIE V. ABERCROMBIE

##### CIVIL - DOMESTIC RELATIONS

**CIVIL PROCEDURE - JUDGMENTS - RES JUDICATA** - Once a case is litigated to a final judgment, and no appeal is taken, a party who participated in the original litigation cannot collaterally attack the court's jurisdiction in a later proceeding

**FAMILY LAW - DIVORCE PROCEEDINGS - ATTORNEY'S FEES** - The matter of determining attorney's fees in a divorce action is largely entrusted to the discretion of the chancellor; it is the function of the chancellor to weigh all of the facts and assess the circumstances and to award attorney's fees accordingly

**FAMILY LAW - CHILD SUPPORT - MODIFICATION** - Child support obligations vest in the child as they accrue and, once vested, cannot be modified or forgiven by the courts

##### **FACTS**

Faith and Jonathan Abercrombie married in 2008 and lived in Louisiana with their child until 2014 when the couple separated. Jonathan filed for divorce in the Lamar County Chancery Court, and in 2015, the final judgment for divorce was issued, granting child custody to Faith, and requiring Jonathan to pay \$280 per month in child support. Faith filed a timely notice of appeal asserting that the court lacked jurisdiction because Jonathan had not lived in Mississippi for long enough before filing the complaint and her child's home state was Louisiana. The chancellor affirmed the judgment and awarded Jonathan \$500 in attorney's fees for defending against Faith's motion to dismiss. The chancellor similarly found that the chancery court had jurisdiction on two subsequent final judgments. But, following evidence that Faith and Jonathan initially obtained their child's custody by fraud, the chancellor vacated the divorce judgment. Further, the chancellor forgave Jonathan's past-due child support and altogether suspended child support as a sanction for Faith's failure to comply with the court's visitation requirements. Faith appealed.

##### **ISSUES**

Whether the chancery court (1) lacked subject matter jurisdiction to enter its original judgment and initial determination of custody; (2) erred by awarding attorney's fees to Jonathan; and (3) erred by forgiving Jonathan's past-due child support and suspending child support as a sanction for Faith's failure to comply with the court's visitation requirements.

##### **HOLDING**

(1) Because the case was litigated to a final judgment three times prior to the present appeal, the chancery court's ability to enter its original judgment and initial determination of custody was res judicata; therefore, the chancery court correctly ruled on the matter of jurisdiction. (2) Because the chancellor did not make any finding that Faith's motion to dismiss for lack of jurisdiction was frivolous or provide a legal basis for an award of attorney's fees, the chancellor erred in awarding attorney's fees to Jonathan. (3) Because Faith failed to provide the necessary transcripts, pleadings, and

information relevant to the issue of child support and, because the appeal was not timely, the issue was waived and could not be considered on appeal. Therefore, the Court of Appeals affirmed in part and vacated and remanded in part the judgment of the Lamar County Chancery Court.

### **DISSENT**

Judge McCarty argued that because the divorce decree was invalidated on grounds of fraud related to child custody and adoption, the chancery court should have vacated all subsequent custody determinations stemming from the divorce. Further, because the child had minimal contacts with Mississippi and, because jurisdiction cannot be achieved through deception or fraud, the chancery court did not have subject matter jurisdiction to hear the case.

### **Affirmed in Part; Vacated & Remanded in Part - 2017-CA-01158-COA (Aug. 20, 2019)**

En Banc Opinion by Presiding Judge J. Wilson - Dissent by Judge McCarty

Hon. M. Ronald Doleac (Lamar County Chancery Court)

Dianne Herman Ellis for Appellant - Chase Ford Morgan & Andrew Arman Miri for Appellee

Briefed by [Charity Karanja](#)

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## **BRADLEY V. PUB. EMPS. RET. SYS.**

### **CIVIL - STATE BOARDS & AGENCIES**

**ADMINISTRATIVE LAW - JUDICIAL REMEDIES - REVIEW** - An agency's conclusions must remain undisturbed unless the agency's order: (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates one's constitutional rights

**ADMINISTRATIVE LAW - DISABILITY - EVIDENCE** - In order to be eligible for PERS disability benefits the claimant must prove through sufficient evidence (i) that he is mentally or physically incapacitated for the further performance of duty; (ii) that such capacity is likely to be permanent; and (iii) that he should be retired

### **FACTS**

Jonathan Bradley worked nearly 25 years as a correctional supervisor for the Mississippi Department of Corrections at the Greenwood Restitution Center before retiring due to right shoulder, right leg, and back problems. In the years preceding his retirement, Bradley sought treatment from several medical practitioners for these ailments, many of which Bradley claimed were work related injuries. However, none of these practitioners found Bradley to be incapable of performing his work duties. Bradley applied for both regular and duty-related disability with the Public Employees' Retirement System ("PERS"). At the request of PERS, Dr. Collipp conducted an Independent Medical Evaluation. Dr. Collipp concluded that no permanent restrictions should be assigned to Bradley. The PERS Medical Board reviewed Bradley's application and ultimately determined that there was insufficient evidence that Bradley was disabled, and therefore concluded that he did not qualify for PERS disability benefits. After exhausting his administrative appeals, Bradley appealed to the Hinds County Circuit Court, which upheld the PERS' decision. Bradley appealed.

### **ISSUES**

Whether (1) PERS' decision to deny Bradley disability benefits was supported by substantial evidence and (2) whether the circuit court's decision to affirm was arbitrary and capricious.

### **HOLDING**

(1) Because no medical practitioner opined that Bradley was incapable of performing his regular duties or concluded that Bradley was permanently disabled, there was substantial evidence to support the denial of Bradley's disability benefits. (2) Because there was substantial evidence to support the decision denying benefits by the PERS Board, the circuit court's decision to affirm was not arbitrary and capricious. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

**Affirmed - No. 2018-SA-00555-COA (Aug. 20, 2018)**



Opinion by Judge Westbrooks  
Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)  
George S. Luter & Thomas Upton Reynolds II for Appellant - Samuel Martin Millette & Jane L. Mapp (Att’y Gen. Office) for Appellee  
Briefed by [Bryant Carlton](#)

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## COOK V. STATE

### CIVIL - OTHER

**CRIMINAL LAW - PARDON & PAROLE - APPEAL** - The grant or denial of parole is entirely within the Mississippi Parole Board’s discretion and the denial of parole is not subject to a statutory right of appeal

**CRIMINAL LAW - PARDON & PAROLE - JURISDICTION** - Although Miss. Code Ann. § 99-39-5(1)(h) grants the circuit courts jurisdiction over appeals concerning the revocation of parole, there is no statute granting the circuit courts jurisdiction over appeals concerning the denial of parole

**CRIMINAL PROCEDURE - PARDON & PAROLE - APPEAL** - A petitioner proceeding under the Uniform Post-Conviction Collateral Relief Act is allowed to proceed in forma pauperis in perfecting his appeal to the Mississippi Supreme Court

### FACTS

In 1994, Benjamin Cook was convicted of murder and armed robbery following a jury trial in the Pike County Circuit Court. Cook was sentenced to life in the custody of the Mississippi Department of Corrections for murder and received a twenty-year sentence for armed robbery. In July of 2017, the Mississippi Parole Board (“the Board”) granted Cook parole but subsequently rescinded it due to the severity of Cook’s convictions and the community response in opposition to parole. In response, Cook filed a motion to correct the judgment of parole as a petition for post-conviction relief under the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”) in the Pike County Circuit Court. The circuit court dismissed the motion, finding that it lacked jurisdiction over the matter. Cook appealed.

### ISSUES

Whether the circuit court (1) erred in dismissing Cook’s motion and (2) should have denied Cook’s motion to proceed in forma pauperis on appeal.

### HOLDING

(1) Because Cook’s parole was denied, not revoked, and because the denial of parole is entirely within the Board’s discretion and not subject to a statutory right of appeal, the trial court properly dismissed Cook’s motion for want of jurisdiction. (2) Because Cook filed his motion under the UPCCRA and alleged unlawful revocation of parole both at the trial level and on appeal, the trial court did not err in granting Cook leave to proceed in forma pauperis on appeal. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

### CONCURRENCE

Judge Westbrooks agreed with the majority’s opinion but wrote separately to discourage parole boards from rescinding grants of parole because such action has the potential to undermine the rehabilitative nature of punishment. She argued that both retributive and utilitarian theories are considered as justifications for punishment at sentencing, and a parole board should consider the same theories when evaluating an offender’s eligibility for parole. Accordingly, in Judge Westbrooks’s view, Cook’s time served satisfied both the retributive and utilitarian theories of punishment, and the parole board should not have revoked its decision to grant Cook parole once he was deemed eligible.

### **Affirmed - 2018-CP-00860-COA (Aug. 20, 2019)**

Opinion by Chief Judge Barnes - Concurrence by Judge Westbrooks  
Hon. David H. Strong Jr. (Pike County Circuit Court)  
*Pro se* for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellee

Briefed by [Breland Parker](#)

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## CREW V. TILLOTSON

### CIVIL - DOMESTIC RELATIONS

**CIVIL PROCEDURE - DOMESTIC RELATIONS - RES JUDICATA** - A divorce action involving multiple states is divisible, and where a state does not exercise jurisdiction over the parties' marital property, the claim for equitable distribution is not barred

**FAMILY LAW - DOMESTIC RELATIONS - PROPERTY DIVISION** - Where stock shares are made an inter vivos gift, and where one spouse did not contribute or participate in the business, the business will be considered the other spouse's nonmarital property

**CONSTITUTIONAL LAW - FAMILY LAW - FULL FAITH AND CREDIT** - Each state must give full faith and credit to out-of-state divorce decrees

### FACTS

Lisa Crew and Sidney Ellis Tillotson Jr. ("Ellis") married in December 1978. Ellis's father, Sidney Ellis Tillotson Sr. ("Senior"), with rent money from Ellis, Ellis's brother Mark and another tenant, purchased 1,200 acres of land. In 1994, Senior formed Tillotson Enterprises Inc. ("TEI") and issued 333 and 1/3 shares of stock each to himself, Ellis, and Mark. Senior also conveyed the land he had purchased to TEI. Around 1995, Senior and Mark began experiencing financial trouble and surrendered their stock back to TEI, making Ellis TEI's sole shareholder. TEI made several property purchases in the years following his father's and brother's relinquishment of shares. Lisa did not contribute to TEI's operations and testified that she was not responsible for any debt of TEI. Lisa and Ellis separated in September of 2013, and Lisa soon moved to North Carolina. She filed for divorce in North Carolina in 2014 and requested no equitable distribution. On May 1, 2015, a North Carolina court granted the parties a divorce. On May 7, 2015, Lisa filed a complaint with the Warren County Chancery Court for equitable distribution and other relief. Ellis moved to dismiss on the basis that Lisa's failure to raise equitable distribution in the North Carolina divorce proceeding barred the issue in any subsequent proceeding. On December 7, 2015, the chancellor denied Ellis's motion to dismiss finding that Lisa's failure to raise the issue of equitable distribution in North Carolina did not bar her from raising it in the Mississippi proceeding. In 2016, the chancellor found that Senior gifted his shares in TEI to Ellis and that they were nonmarital property. Therefore, the shares were not subject to equitable distribution. Lisa appealed the classification of TEI and its assets as nonmarital property, and Ellis cross-appealed asserting that the chancellor erroneously denied his motion to dismiss.

### ISSUES

Whether the trial judge erred in (1) dismissing Ellis's motion to dismiss and (2) finding that TEI and its assets constituted nonmarital property.

### HOLDING

(1) Because a divorce action involving multiple states is divisible, and because North Carolina did not exercise jurisdiction over the parties' marital property and Lisa filed an action within six months of the entry of divorce, the North Carolina divorce judgment did not destroy Lisa's right to equitable distribution. (2) Because Senior's TEI stock transfer was an inter vivos gift, and because Lisa did not actively participate or contribute to TEI, TEI and its assets were never marital property. Therefore, the Court of Appeals affirmed the judgment of the Warren County Chancery Court.

### DISSENT

Presiding Judge J. Wilson argued that the Full Faith and Credit Clause of the Constitution requires each state to give full faith and credit to an out-of-state divorce decree. Because the North Carolina court had personal jurisdiction over Ellis for the divorce judgment, the judgment barred Lisa's claim for equitable distribution.



**Affirmed - 2017-CA-01011-COA (Aug. 20, 2019)**

Opinion by Judge Tindell - Dissent by Presiding Judge J. Wilson

Hon. Vicki R. Barnes (Warren County Chancery Court)

Marty Craig Robertson, William Clinton Pentecost, & Robert Marvin Peebles for Appellant - B. Blake Teller & Joshua Lawrence Dixon for Appellee

Briefed by [John Forrest Kelly](#)

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**COURT OF APPEALS - POST-CONVICTION RELIEF**

**JACKSON V. STATE**

**CIVIL - POST-CONVICTION RELIEF**

**CRIMINAL PROCEDURE - POST-CONVICTION PROCEEDINGS - STANDING** - Miss. Code Ann. § 99-39-5, which provides for post-conviction relief, does not include persons released from custody and no longer suffering the effects of the sentence

**CRIMINAL PROCEDURE - POST-CONVICTION PROCEEDINGS - STANDING** - A petitioner who is no longer serving time under the sentence complained of, even if the petitioner is still incarcerated, lacks standing to bring a PCR motion

**FACTS**

On January 16, 1987, David Jackson was indicted for burglary of an inhabited dwelling at night while armed with a deadly weapon. Jackson pled guilty and was sentenced to eight years in the custody of the Mississippi Department of Corrections. After serving his sentence, he was released from custody. In 1998, the circuit court subsequently convicted Jackson for possession of cocaine with intent to distribute and sentenced him to thirty years as a habitual offender. The court used his 1987 burglary as a basis for his habitual-offender status. Jackson filed a motion for post-conviction relief (“PCR”) with the circuit court on August 24, 2018, challenging his 1987 burglary conviction from thirty years earlier. The circuit court dismissed the motion, finding that Jackson lacked standing to bring his motion because he was no longer in custody under his 1987 burglary conviction and sentence. Jackson appealed.

**ISSUE**

Whether the court erred in dismissing Jackson’s motion for PCR for lack of jurisdiction.

**HOLDING**

Because Jackson had already served his sentence for his burglary conviction and thus lacked standing to file his PCR, the court did not err in dismissing his PCR motion for lack of jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

**Affirmed - 2018-CP-01334-COA (Aug. 20, 2019)**

Opinion by Chief Judge Barnes

Hon. William E. Chapman III (Madison County Circuit Court)

*Pro se* for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Jordan Thomas](#)

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**COURT OF APPEALS - CRIMINAL CASES**

## WORD V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - TRIAL IN ABSENTIA - WAIVER** - If a defendant takes willful, voluntary, and deliberate actions to avoid trial, he has waived the right to be present at trial and may be tried in absentia

**CRIMINAL LAW - SUFFICIENCY OF EVIDENCE - STANDARD OF REVIEW** – To support conviction for constructive possession of a controlled substance, the contraband merely has to be found near the defendant in a place over which the defendant exercises dominion or control

#### FACTS

Christopher Word was convicted for three counts of possession of controlled substances along with a charge for being a non-violent habitual offender. Word pled not guilty to the charges, and the trial court entered an order setting trial for May 14, 2018. When the trial date arrived, Word was not present. Defense counsel stated for the record that Word was given proper notice of the trial date, however, Word “chose” not to exercise his right to be present at trial, so defense counsel requested a continuance that was denied. Also, defense counsel did not attempt to contact Word on the trial date. Prior to trial, Word was arrested while officers were conducting a search for him due to his failure to charge his GPS device providing officers with his location because he was currently on probation. Officers found Word staying at a friend’s apartment with synthetic marijuana in his pocket and Word appearing to be under the influence. During a search of the apartment, officers found two boxes with Word’s name attached to them. The contents were a high dollar drone along with burner phones and other types of drug paraphernalia. A Narcotics Investigator testified that these specific contents are regularly used to smuggle drugs and other forms of contraband into correctional facilities. Word was sentenced to serve sixteen years for Count I and forty years for Count II to be served concurrently. Word appealed.

#### ISSUES

Whether the trial court (1) abused its discretion by trying Word in absentia and (2) had sufficient evidence to support a conviction for possession of a controlled substance.

#### HOLDING

(1) Because Word was told both verbally and in writing on more than one occasion when to be present for trial, if he so desired to be present, he knew he had the right to be at his trial, and finally defense counsel’s statement that he “chose” to exercise his right not to be there, Word willfully avoided trial, and therefore the trial court did not abuse its discretion to try him in absentia. (2) Because Word was found with synthetic marijuana on his person along with being in proximity to the two boxes with drugs and other drug paraphernalia, the two boxes had Word’s name and address on them, which satisfies the essential elements of the crime beyond a reasonable doubt. Therefore, the Court of Appeals affirmed the judgment of the Panola County Circuit Court.

#### DISSENT

Judge McCarty argued that there was no actual evidence that Word willfully avoided trial, and therefore the trial court should have granted a continuance in order to safeguard the constitutional rights of not only this defendant, but also all those who face trial. He made reference in this case that the morning of trial no effort was made to contact Word. Furthermore, Judge McCarty argued that defense counsel’s statement that Word “chose” not to show up was not evidence as a matter of law and should not be taken into consideration when ruling on Word’s willfulness.

#### **Affirmed - 2018-KA-00946-COA (Aug. 20, 2019)**

En Banc Opinion by Judge Greenlee - Dissent by Judge McCarty

Hon. James McClure III (Panola County Circuit Court, First Judicial Dist.)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [Robert Rhea](#)

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**MISSISSIPPI CASES EDITOR**  
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